IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.MC.No. 3574 of 2007()

CC.615/2007 of THE JFCM COURT, KOTHAMANGALAM.
CRIME NO.309/99 OF KOTHAMANGALAM POLICE STATION

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PETITIONER: 2ND ACCUSED:

THANKACHAN, AGED 32 YEARS,
S/O.JOHN, CARAKIL HOUSE, KANNIKANDOM BHAGAM,
VAZHITHALA BHAGAM, PURAPPUZHA VILLAGE.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: COMPLAINANT & STATE:

STATE OF KERALA REP. BY STATION HOUSE
OFFICER, KOTHAMANGALAM POLICE STATION,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM , COCHIN-31.
(CRIME NO. 309/99)

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3574 of 2007

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Dated this the 29th day of November, 2007

O R D E R

The petitioner is the second accused in a prosecution for offences punishable, inter alia, under Sections 447 and 506(i) r/w. 149 I.P.C. All offences are summons offences, it is submitted. The learned counsel further submits that the petitioner has been exempted from personal appearance under Section 205 Cr.P.C. Trial proceeded. The matter has reached the stage of 313 examination. The petitioner is employed abroad and finds it impossible to appear before the learned Magistrate and personally take part in the 313 examination. The petitioner through his counsel filed an application that he may be permitted to answer the questions through counsel as enabled by the dictum in **Basavaraj R. Patel** v. **State of Karnataka** (2000 (3) KLT SN 69, Case 74). The learned Magistrate dismissed the said prayer holding that the procedural safeguards insisted by the said

decision has not been complied with. I find absolutely nothing wrong in the impugned order.

2. The learned counsel, after discussions at the Bar, prays that the petitioner may be permitted to file a fresh proper application to invoke the dictum in **Basavaraj R. Patel** (Supra). In the alternative he prays that he may be permitted to file an application to dispense with the examination under Section 313 Cr.P.C.as permitted under the proviso to Section 313(1) Cr.P.C.

3. I am satisfied that this Crl.M.C. can now be dismissed without any fetter on the rights of the petitioner to pursue either of the two courses referred above. I may hasten to observe that the mere fact that a non-bailable warrant has been issued against the petitioner should not stand in the way of the learned Magistrate considering such applications, if any filed, on merits.

4. With the above observations, this Crl.M.C. is dismissed.

(R. BASANT)
Judge

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